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17
18 UNITED STATES DISTRICT COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20
21 SAN JOSE DIVISION

22 NATIONAL URBAN LEAGUE, et al.,
Plaintiffs,

23 v.
24

WILBUR L. ROSS, JR., et al.,

25 Defendants.
26
27
28

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' RESPONSE TO COURT'S
ORDER RE: COMMUNICATIONS
WITH COURT (DKT. 100)**

1 Plaintiffs submit this Response as required in the Order Re: Communications with the
 2 Court (Dkt. 100). For the reasons set forth below, Plaintiffs believe that the email and evidence
 3 submitted by the census field enumerator to the Court raise concerns about Defendants' full
 4 compliance with the Court's TRO. Plaintiffs had asked Defendants to provide details to the Court
 5 in the parties' Joint Case Management Statement (Dkt. 99) on their ongoing compliance efforts
 6 regarding the TRO. Defendants declined. In light of the communication sent to the Court, and
 7 some additional (as of yet unverified) information Plaintiffs have received in unsolicited
 8 communications from other census employees throughout the country, Plaintiffs respectfully
 9 request that the Court require Defendants to provide a detailed compliance report, including
 10 addressing the issues raised below.

11 **I. EMAIL AND SCREENSHOTS SENT DIRECTLY TO THE COURT (DKT. 100)**

12 It appears from internet research that the person who contacted the Court is a census field
 13 enumerator in the Austin, Texas area. The text messages suggest that he was assigned to a new
 14 Census Field Supervisor and has been directed to artificially reduce his availability to conduct field
 15 work. Plaintiffs do not have enough information to tell if this violates the Court's TRO because the
 16 levels of NRFU completion in Austin and in surrounding areas varies, with some over the 90%
 17 threshold and others below the threshold. But at the very least, the email raises questions about the
 18 Census Bureau's own post-TRO directive to "[c]ontinue to have staff travel from areas that are at
 19 higher levels of completion to areas that are underperforming because of insufficient staffing
 20 numbers." Dkt. 86, Attachment C. As of September 12, many regions in Texas are far below the
 21 threshold. For example, the Bureau's Texas statistics report only 62.0% NRFU completion in the
 22 Fort Bend County Area Census Office (ACO) #3178 and 64.3% NRFU completion for the Laredo
 23 ACO #3187. The email suggests Mr. Fabian would be willing to be redeployed to an area that
 24 needs more work, but that is not happening.

25 **II. ADDITIONAL UNSOLICITED COMMUNICATIONS RECEIVED BY PLAINTIFFS**

26 As noted, additional individuals identifying themselves as Census Bureau employees have
 27 contacted Plaintiffs over the last week with reports bearing on the accuracy of the census and
 28 compliance with the Court's TRO. Plaintiffs did not solicit these contacts. Plaintiffs have not

1 received permission to identify these individuals nor have Plaintiffs independently investigated
 2 their claims. But in light of the Court’s Order, Plaintiffs set forth below the issues raised by these
 3 communications should it bear on the Court’s need for additional information from Defendants
 4 concerning TRO compliance.

5 **New York.** An enumerator working in Brooklyn, New York (ACO #2292) has reported
 6 that she and other enumerators in her group were told to cease counting in Brooklyn and to relocate
 7 to unspecified southern states through the end of September because, she was told, there was a
 8 shortage of assignments in Brooklyn. At that time, the Bureau’s statistics reported only around
 9 60% NRFU completion. After the Court entered the TRO, a supervisor told her that the office was
 10 shutting down operations soon, again because of few open cases in the area. Yet the Bureau’s
 11 statistics at that time reported only 65.6% NRFU completion for her area. Even so, during the week
 12 of September 7, the enumerator and her colleagues apparently were assigned no cases despite being
 13 available to work. As of September 12, the Bureau’s statistics report only 73.8% NRFU completion
 14 for that ACO.

15 **Illinois.** Just days before the Court entered the TRO, an enumerator in the Chicago area
 16 reported that the “Optimizer” software system had been down for the previous three weeks. This
 17 is the software program Mr. Fontenot discussed in his declaration: “the Optimizer (a software
 18 program that both schedules work for our enumerators and then routes them in the most effective
 19 routing)” led to “observed higher levels of overall staff productivity” during the “early start of
 20 NRFU operations.” Dkt. 81-1, Fontenot Decl. ¶ 85. According to Mr. Fontenot, “[t]he increased
 21 productivity that we observed during the soft launch period was a factor in our ability to design
 22 the replanned field operations to end by September 30, 2020.” *Id.* The Chicago-area enumerator
 23 reported that when the Optimizer was working, he would be assigned more than 50 cases a day.
 24 But he receives only a handful of cases when the Optimizer is down—as it reportedly was leading
 25 up to the TRO hearing.

26 **California.** A Census Field Supervisor in Southern California reported supervising 40 to
 27 50 enumerators at one point, but said that in the weeks leading up to the Court’s TRO, the
 28

1 Bureau had deactivated most local enumerators.¹ A couple of days after the Court's TRO, this
 2 individual was supervising only two enumerators. This Supervisor also confirmed that the
 3 Optimizer was down for several weeks, which caused many new enumerators to receive no
 4 assignments.

5 In addition, the Associated Press reported that after the TRO was entered, a California
 6 field manager instructed supervisors to rate enumerators with letters "A," "B," and "C," and to
 7 terminate those with a "C" rating.² The Bureau's spokesperson commented only that "no
 8 directive to make such ratings has been made from headquarters or the six regional offices," but
 9 did not challenge the accuracy of the report.

10 **Tennessee.** An enumerator in Tennessee reported numerous problems with his Bureau-
 11 issued technology, including malfunctioning GPS and being totally locked out of his device
 12 altogether. He also confirmed problems with the Optimizer software. He reports that he was
 13 terminated by the Bureau over a dispute with his managers about whether his pay could be
 14 docked when the technology did not work, and has filed a complaint with the Inspector General.

15 **III. CONCLUSION**

16 Plaintiffs regret not having had the time or ability to investigate these reports, or to learn
 17 any details about whether Bureau operations are being performed at the field office level to
 18 comply with the Court's TRO. Since the urgency of this matter and logistical impediments make
 19 investigative discovery impractical, Plaintiffs respectfully request that the Court require
 20 Defendants to provide a detailed compliance report, including addressing the issues raised by the
 21 individuals described above.

22

23 ¹ See also Dartunorro Clark, "Beyond Negligent: "Census Workers Describe Logistical Nightmare
 24 As Deadline Approaches, NBC News (Sept. 14, 2020), available at
<https://www.nbcnews.com/news/us-news/beyond-negligent-census-workers-describe-logistical-nightmare-deadline-approaches-n1239924>; Caroline Champlin, *Amid Layoffs And Changing End Dates, Confusion Over When Census Work Will Wrap Up In LA*, LAist.com (Sept. 4, 2020),
 25 available at <https://laist.com/2020/09/04/census-2020-bureau-layoffs-enumerators.php>; and
 26 Tyche Hendricks, *Cutting Census Staff in Wildfire Zones Threatens Accurate Count, Workers Warn*, KQED.org (Sept. 8, 2020), available at <https://www.kqed.org/news/11836966/cutting-census-staff-in-wildfire-zones-threatens-accurate-count-workers-warn>, for additional reports
 27 regarding enumerator layoffs.

28 ² See Mike Schneider, *Despite judge's order, plans being made for census layoffs*, Associated Press (Sept. 10, 2020), available at <https://apnews.com/fba134758e9631b80a8110aedd3bc6df>.

1
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13 **ATTESTATION**

14 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this
15 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred
16 in this filing.

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